

## EXHIBIT R

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
3 CHARLESTON DIVISION

4 Master File No. 2:12-MD-02327

5 \*

6 IN RE: ETHICON, INC. PELVIC \* MDL 2327

7 PRODUCTS REPAIR SYSTEM \* Joseph R. Goodwin

## U.S. District

## 8      LIABILITY LITIGATION                          \* Judge

9 \*

10 THIS DOCUMENT RELATES TO ALL CASES

11 AND VARIOUS OTHER CROSS-NOTICED ACTIONS

12

13 CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

14

15 VIDEOTAPED DEPOSITION OF CHERYL H. BOGARDUS

## 16 The Executive Center at Exchange Place, LLC

18 Waterbury, Connecticut

19 August 30, 2013 10:13 a.m.

20

21

23

24 Golkow Technologies, Inc.

877.370.3377 ph | 917.591.5672 fax

25 [deps@golkow.com](mailto:deps@golkow.com)

1                   Q.         So you didn't look in any files  
2                   that you might have had at home or any office  
3                   relating to that subject?

4                   A.         No.

5                   Q.         Are you aware that in connection  
6                   with the discovery in this case that Ethicon was  
7                   unable to produce any custodial file for you? In  
8                   other words, a file containing documents,  
9                   electronic or paper documents that you had had  
10                  when you were at the company, are you aware of  
11                  that?

12                  A.         I was told that.

13                  Q.         Okay. And do you have any  
14                  understanding regarding why it is that the  
15                  company -- what is your understanding regarding  
16                  why it is that the company does not have any  
17                  files relating to you when you were at the  
18                  company, a custodial file for you?

19                  A.         I have no idea.

20                  Q.         No?

21                  A.         Why they don't have records of my  
22                  e-mails?

23                  Q.         Right.

24                  A.         I don't know.

25                  Q.         Okay. When you left the employment

1       of Ethicon, which I guess was in 2007 --

2           A.       Yes.

3           Q.       -- around May of 2007.

4                   When you left Ethicon, did you  
5                delete, discard or destroy any paper or  
6                electronic documents that you might have had in  
7                your office or on your computer at that time?

8           A.       No.

9           Q.       So as far as you know, all of those  
10          documents would have been still on your computer  
11          or in the company's computers or in your files at  
12          the time you left, right?

13          A.       Yes.

14          Q.       Did you take copies of -- either  
15          originals or copies of any documents --

16          A.       No.

17          Q.       -- when you left the company?

18          A.       No, I did not.

19          Q.       Prior to the termination of your  
20          employment, did you ever take any documents or  
21          did you ever have any documents either on any  
22          home computer or in any files that you maintained  
23          at your home, that is to say Ethicon-related  
24          documents?

25          A.       I don't remember anything

1       specifically. I kept records of the required  
2       documents that I was required to sign, like the  
3       secrecy agreement and things like that, but I did  
4       not keep anything that was company related to my  
5       job or would have been confidential.

6           Q.        Okay. So I take it from that that  
7       you may have at home a file that contains things  
8       like an agreement between -- an employment  
9       agreement or a confidentiality agreement that you  
10      might have had with Ethicon, but you would not  
11      have any files relating to let's say business  
12      matters?

13          A.        No.

14          Q.        Okay. And would the same be true  
15      of your home computer?

16          A.        Yes.

17          Q.        Okay. So as far as you know  
18      sitting here today, the only documents that you  
19      would be aware of that would relate to let's say  
20      pelvic floor products at Ethicon, those, if they  
21      existed at the time of your termination, they  
22      would be on the company's computers or in the  
23      company's files, and you don't have any copies;  
24      is that fair?

25          A.        It is fair to say I don't have any

1 copies.

2 Q. Okay.

3 A. I don't know -- I know the day I  
4 left I hadn't touched anything --

5 Q. Okay.

6 A. -- and that's all I know.

7 Q. Okay. Do you have any reason to  
8 believe before you left that any -- not  
9 immediately before you left but at any time  
10 before you left that any documents relating to  
11 pelvic floor products had been deleted, discarded  
12 or destroyed?

13 A. No. I mean, certainly not  
14 intentionally and --

15 Q. Okay.

16 A. You normally delete things not to  
17 fill up your e-mail, so I'm sure I deleted  
18 something at some time.

19 Q. So other than in the ordinary  
20 course of business when an e-mail comes in and  
21 you don't feel you need it anymore or it's a  
22 trivial e-mail, other than that sort of routine  
23 thing that we all do, you don't recall any  
24 particular deleting, discarding or --

25 A. No.

1 Q. -- disposal or destruction of  
2 documents?

3 A. No, I don't.

4 Q. Are you aware that Ethicon had a  
5 practice of routinely getting rid of documents as  
6 part of a formal document retention program?

7 A. There was a document retention  
8 program. I don't remember the specifics of it.

9 Q. Okay. Do you remember that as part  
10 of that document retention program there was an  
11 annual purge of documents where people were  
12 suppose to go through and get rid of stuff that  
13 was not needed?

14 A. I don't remember that it was  
15 annual.

16 Q. Okay.

17 A. I don't remember the specifics of  
18 it.

19 Q. Do you recall ever having done it?

20 A. I don't recall having done it, but  
21 I would only guess that if it was a requirement I  
22 would have done it.

23 Q. Okay. Do you recall having ever  
24 received a memo or a note or something or some  
25 kind of e-mail communication telling you, okay,

1       it's time to comply with the document retention  
2       program?

3                  A.       Yes. Vaguely, yes, because there  
4       was a process in place, and part of that process  
5       would have been getting some type of notification  
6       at some time.

7                  Q.       Okay. And do you recall that as  
8       part of that process you were also from time to  
9       time told that certain documents should be held  
10      on to because of litigation?

11                 A.       I don't remember ever being told to  
12      hold on to a document because of litigation.

13                 Q.       Never?

14                 A.       Never.

15                 Q.       And you don't remember ever getting  
16      either a e-mail or a written communication  
17      telling you to hold on to documents?

18                 A.       No, I don't remember that. I mean,  
19      specific to a legal matter?

20                 Q.       Either specific to a legal matter  
21      or in particular a --

22                 A.       Or any time. I don't remember ever  
23      being asked to hold on to any documents.

24                 Q.       Okay. During the course of your  
25      work at Ethicon, where did you -- if you kept

1 paper or electronic documents, where did you keep  
2 them? And I take it -- by that I mean  
3 physically, if it was paper, or electronically  
4 where was it stored if it was electronic or if  
5 there's some other place.

6 A. Well, I obviously had files in my  
7 workspace --

8 Q. Okay.

9 A. -- and on my computer.

10 Q. Okay. And other than files that --  
11 now, in your workspace, I take it that would be  
12 in -- you had an office?

13 A. I had an office until the last six  
14 months I was there.

15 Q. Okay. And I don't want to make  
16 this more complicated than it needs to be but,  
17 'cause you may have moved, but I'm trying to get  
18 a sense of -- let's talk about in the last six  
19 months when you were there. Did you still have  
20 the same files, maintain basically the same  
21 collection of files that you had had the six  
22 months prior to that, or was it like a new set of  
23 files?

24 A. I don't remember.

25 Q. Okay.

1                   A.         I had five different positions in  
2         six years --

3                   Q.         Right.

4                   A.         -- and I'm sure I passed files on  
5         to other people. I must have. I'm guessing  
6         again but.

7                   Q.         At the time you left, paper  
8         files --

9                   A.         Mm-hmm.

10                  Q.         -- where were they located and how  
11         voluminous were they?

12                  A.         Well, I had a small cubicle, so  
13         they weren't that voluminous.

14                  Q.         Okay.

15                  A.         But they were in file drawings.

16                  Q.         About how many file draws?

17                  A.         I'm trying to remember.

18                  Q.         Was it like a four- or five-draw  
19         file cabinet or was it like a smaller file  
20         cabinet next to your desk?

21                  A.         There was a two-draw file cabinet  
22         that was, you know, about three, four feet long.

23                  Q.         Okay. So, in other words, the draw  
24         was about three or four feet deep?

25                  A.         No, long.

1 Q. Oh, wide. So it was like lateral  
2 files?

3 A. Wide, yes, wide.

4 Q. Okay. So two draws about three or  
5 four feet long?

6 A. (Witness nods.)

7 Q. And were those two draws relatively  
8 full of files?

9 A. I don't remember.

10 Q. Okay. Were there files in both,  
11 files in both draws?

12 A. Yes.

13 Q. Okay. And it probably was not  
14 completely jammed full of documents, right, or  
15 was it?

16 A. I don't remember. That was a long  
17 time ago, over six years ago.

18 Q. Okay. I appreciate that. Now --  
19 and for electronic documents, those would be on  
20 your computer, right?

21 A. (Witness nods.)

22 Q. Did you have some kind of a system  
23 of how you filed e-mails? How did you do that?

24 A. Probably a system in my own head,  
25 but I filed typically by people and subject.

1                   Q.         Actually, you're getting ahead of  
2                   me.

3                   Did you use like a program like  
4                   Outlook or something like that to keep track of  
5                   your e-mails?

6                   A.         Yes, Outlook.

7                   Q.         Okay. And so you could set up your  
8                   own little folders in Outlook?

9                   A.         Folders, right.

10                  MS. MAIMBOURG: You know what,  
11                  Cheryl, wait until he finishes asking the  
12                  question 'cause you two are talking over each  
13                  other.

14                  THE WITNESS: Sorry.

15                  MR. SHERIDAN: Yeah, I was going to  
16                  say that. I will try not to interrupt you --

17                  THE WITNESS: Sorry.

18                  MR. SHERIDAN: -- but it will make  
19                  it more easy for the court reporter to get  
20                  everything.

21                  So you used Outlook and you set up  
22                  a system of folders to save e-mails, right?

23                  A.         Yes.

24                  Q.         And the folders were just folders  
25                  that you set up yourself based on what you

1       thought was a good way to organize your e-mails,  
2       right?

3                  A.           Yes.

4                  Q.           Okay. And when you left the  
5                 company, that -- as far as you know, that e-mail  
6                 structure and folder structure was still in  
7                 place?

8                  A.           Yes.

9                  Q.           So e-mails that you had saved there  
10                 should still have been there, right?

11                 A.           Yes.

12                 Q.           Okay. Now, you were with Ethicon  
13                 from approximately 2001 until I guess it was  
14                 about May of 2007, right?

15                 A.           Right.

16                 Q.           A period of about six and a half  
17                 years?

18                 A.           A little less, yes.

19                 Q.           Okay. And during the course of  
20                 that period of time, would it be fair to say you  
21                 had a lot of communications that related to  
22                 pelvic floor products?

23                 A.           During the time I was there, I  
24                 worked on the incontinence and pelvic floor area,  
25                 my first two years and four months, and then

1       until the last about six months I was there I  
2       didn't have -- my work didn't involve  
3       commercialization of incontinence and pelvic  
4       floor products.

5           Q.        Okay. Well, during the period of  
6       time when you were working on incontinence and  
7       pelvic floor products, do you have any idea how  
8       many e-mails you would have either sent -- that  
9       you sent or received that would relate to those  
10      issues?

11          A.        I have no idea.

12          Q.        Would it have been thousands?

13          A.        I have no way of quantifying my  
14       work 12 years ago and how much -- and how many  
15       e-mails I sent or received.

16          Q.        Okay. Did you send or receive a  
17       lot of e-mails during your work at Ethicon during  
18       that period of time?

19          A.        What would a lot be? I don't know  
20       what you mean by this.

21          Q.        How about would you send or receive  
22       let's say a hundred e-mails a day?

23          A.        Possibly.

24                   MS. MAIMBOURG: Could I just  
25       clarify? Are you talking about the early 2000

1 period? Remember, she said she only dealt with  
2 incontinence the first two years and four  
3 months --

4 MR. SHERIDAN: Okay.

5 MS. MAIMBOURG: -- and then her  
6 last six months. And certainly I think people's  
7 e-mail habits changed over that decade, so I'm  
8 just trying to seek some clarification as to what  
9 you're asking her.

10 Q. Okay. During the period of time  
11 that you had some involvement with incontinence  
12 or pelvic floor products, would it be fair to say  
13 you sent or received something on the range of a  
14 hundred e-mails a day?

15 A. Yes.

16 Q. Okay. During the course of your  
17 work at Ethicon, did anyone ever ask you to  
18 collect and save any documents relating to  
19 incontinence or pelvic floor products?

20 Let me amend that. In connection  
21 with any type of litigation.

22 A. No, not that I remember.

23 Q. Okay. Could you please describe  
24 for us your educational background after high  
25 school?